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March 17, 1961
Opinion No. 61-15

REQUESTED BY: W. W. "Skipper" Dick
Superintendent of Public Instruction

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Is the Board of Trustees of a common school district authorized to employ special teachers to instruct pupils in foreign languages within the meaning of §15-448, A.R.S.?

CONCLUSION: Yes

The basic power to prescribe courses of study lies within the realm of the legislature. This power may be delegated to state agencies and local school boards within the limits and standards as fixed by the legislature. 47 Am. Jur. §200.

The Arizona Legislature has delegated to the Arizona State Board of Education the power to establish the subjects that must be taught in all elementary schools. It has further authorized the State Board of Education to prescribe an optional list of subjects to be taught. The applicable provisions of the Arizona Revised Statutes are set forth below.

"§15-102. Powers and duties
The state board of education shall:
* * *

15. Prescribe and enforce a course of study in the common schools.
 16. Prescribe the subjects to be taught in all common schools.
 17. Prescribe a list of optional subjects to be taught in all common schools. The list shall include manual training, household economics, kindergarten and such other subjects as the board determines.
- * * *

In addition to the powers conferred upon the Arizona State Board of Education, the legislature has authorized the Board of Trustees of a school district to employ special teachers in certain specified fields and "other special subjects." The pertinent portion of §15-448, A.R.S., is recited below:

"§15-448. Kindergartens and special departments;
special teachers

* * *

B. The board may:

1. Employ special teachers in drawing, music, domestic science, manual training, kindergarten, commercial work, agriculture and other special subjects." (Emphasis supplied)

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The question to decide is whether instruction in foreign languages lies within the meaning of "other special subjects." Among the definitions of "special" contained in Webster's New International Dictionary, Second Edition, 1959, is included, "(1) Distinguished by some unusual quality; uncommon." Foreign languages are not commonly included in the subjects taught in elementary schools. When one thinks about the subjects taught in the elementary grades, the ones that come to mind are reading, writing, arithmetic and spelling. In this sense foreign languages may be considered to be uncommon subjects.

Our Supreme Court in the case of Alexander v. Phillips, 31 Ariz. 503, 254 P. 1056, stated, at page 513:

"We think 'other special subjects' reasonably includes physical education, ***"

The Court was construing para. 2733, Revised Statutes of Arizona, 1913 Civil Code, which is presently contained in A.R.S. §15-448(B)(1).

As early as 1881, it has been decided that foreign languages may be taught in elementary schools where the local school board was authorized by the state legislature to adopt branches of study. Green v. Chicago, 97 Ill. 370.

A question may be raised as to whether or not the rule of "ejusdem generis" excludes foreign languages as special subjects. That statutory rule of construction, its applicability and non-applicability, is stated in 50 Am. Jur., as follows:

"§249. *** where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be, and construed as, restricted by the particular designation and as including only things or persons of the same kind, class, character, or nature as those specifically enumerated. The general words are deemed to have been used, not to the wide extent which they might bear if standing alone, but as related to words of more definite and particular meaning with which they are associated. In accordance with the rule of ejusdem generis, such terms as 'other,' 'other thing,' 'other persons,' 'others,' 'otherwise,' or 'any other,' when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to articles of the same nature as those previously described."

"§250. *****

The rule of ejusdem generis does not apply to restrict the operation of a general expression where the specific things enumerated have no common characteristic, and differ greatly from one another."

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See the following Arizona cases:

White v. Moore
46 Ariz. 48
46 P.2d 1077

State Board of Barber Examiners v. Walker
67 Ariz. 156
192 P.2d 723

City of Phoenix v. Gates
69 Ariz. 68
208 P.2d 1147, 1150

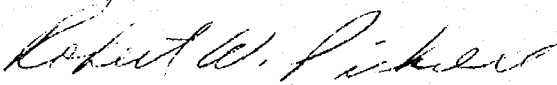
Alvord v. State Tax Commission
69 Ariz. 287
213 P.2d 363, 366

Obviously, the eight enumerated subjects in A.R.S. §15-448(B) have distinguishing features. For example, drawing and music consist of the development and appreciation of artistic ability; kindergarten relates to a pre-elementary grade level of instruction; and agriculture deals with the soil and farm products. The eight enumerated subjects and foreign languages do have a common characteristic from the teaching standpoint. All of them require a special skill. The certificated elementary teacher possesses the necessary skills to teach the fundamental tools of learning - the three R's, but such a teacher may not possess the skills to instruct in any of the eight enumerated subjects or foreign languages.

Our Supreme Court in the Alexander v. Phillips case, supra, did not invoke the rule of "ejusdem generis" in deciding that "other special subjects" included physical education. We think foreign languages as special subjects are not excluded whether or not the rule is applicable.

The opinion is that instruction in foreign languages is within the meaning "other special subjects" and that the Board of Trustees may hire special teachers to instruct in foreign languages.

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